

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

25 Currently before the Court is Defendant Schwab
26 Retirement Plan Services Inc.'s ("Schwab") Motion for
27 Attorney's Fees ("Motion") [177]. Having reviewed all
28 papers submitted pertaining to this Motion, the Court

1 **NOW FINDS AND RULES AS FOLLOWS:** the Court **DENIES**
2 Schwab's Motion.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 Plaintiff Dr. Sujata Vyas ("Plaintiff") is a
6 California resident who married Defendant Bhaskar Vyas
7 ("Defendant Vyas") in 1981. Second Am. Compl. ("SAC")
8 ¶ 21, ECF No. 63. During the couple's marriage,
9 Plaintiff enrolled in the Southern California
10 Permanente Medical Group ("SCPMG") Keogh Plan ("Keogh
11 Plan") and the SCPMG Tax Savings Retirement Plan
12 ("401(k) Plan") (collectively, "the Plans"). Id.
13 ¶ 14a-b.

14 SCPMG Retirement Committee is the Plan
15 Administrator of the Plans. See Decl. of John G.
16 McGlynn in Supp. of Schwab's Mot. for Summ. J., Ex. 1
17 at 61, ECF No. 127-2; id., Ex. 2 at 3, ECF No. 127-3.
18 SCPMG Retirement Committee engaged Schwab as a
19 recordkeeper of the Plans. Id., Ex. 4 at 11, ECF No.
20 136-2; id., Ex. 5 at 1, ECF No. 136-3.

21 Plaintiff and Defendant Vyas separated in 2003, and
22 in 2009, they obtained a Judgment of Dissolution from
23 the Orange County Superior Court finalizing their
24 divorce. SAC ¶ 5. On May 21, 2015, the Orange County
25 Superior Court approved the QDROs regarding the Plans.
26 See Def.'s Req. for Judicial Notice, Exs. 1, 2, ECF
27 Nos. 129-1, 129-2.

28 Plaintiff alleges that in June 2015, Schwab moved

1 approximately \$200,000 of Plaintiff's separate property
2 from the Self-Directed Fund Account to satisfy
3 Defendant Vyas' community share in the Keogh Plan. SAC
4 ¶ 27. Furthermore, on January 12, 2016, SCPMG
5 Retirement Committee instructed Schwab to place a hold
6 on Plaintiff's accounts in both the Plans. Decl. of
7 Cathleen S. Morisako in Supp. of Schwab's Mot. for
8 Summ. J. ¶ 2, ECF No. 127-11.

9 **B. Procedural Background**

10 On December 28, 2015, Plaintiff filed her Complaint
11 against Defendants Vyas, Nancy Bunn, Kaiser Permanente
12 Pension Plan and Administrator ("Kaiser"), Lockheed
13 Martin Pension Plan and Administrator, and QDRO
14 Consulting Services, LLC, alleging Employee Retirement
15 Income Security Act of 1974 ("ERISA") and securities
16 fraud claims. Compl., ECF No. 1. On April 5, 2016,
17 Plaintiff filed her First Amended Complaint, which
18 added Schwab as a defendant and dismissed Kaiser.
19 First Am. Compl., ECF No. 19. On November 24, 2016,
20 Plaintiff filed her Second Amended Complaint adding
21 SCPMG Plan Administrator as a defendant, and generally
22 alleging that Schwab was a de facto fiduciary of the
23 ERISA Plans and breached its fiduciary duties under
24 ERISA. See SAC.

25 On August 31, 2017, Plaintiff and Schwab filed
26 cross-Motions for Summary Judgment [125, 126] regarding
27 the Keogh Plan and the 401(k) Plan. On October 13,
28 2017, the Court granted Schwab's Motion for Summary

1 Judgment. See Order re Schwab's Mot. for Summ. J.
2 ("Summ. J. Order"), ECF No. 172. The Court also
3 entered Judgment in Schwab's favor on October 13, 2017.
4 See Judgment, ECF No. 173.

5 Schwab filed the instant Motion [177] on October
6 27, 2017. Plaintiff timely filed her Opposition [186]
7 on November 17, 2017. Schwab filed its Reply [188] on
8 November 27, 2017. Plaintiff filed an *Ex Parte*
9 Application for Leave to File Response to Evidence
10 filed in Support of Schwab's Reply [190] on December 1,
11 2017, and the Court denied the Application on December
12 4, 2017. Order re Pl.'s *Ex Parte* Appl., ECF No. 192.
13 Plaintiff filed her Objections [193] to Schwab's Reply
14 on December 5, 2017.

15 **II. DISCUSSION**

16 **A. Legal Standard**

17 In an ERISA action, "the court in its discretion
18 may allow a reasonable attorney's fee and costs of
19 action to either party." 29 U.S.C. § 1132(g)(1). "[A]
20 fees claimant must show 'some degree of success on the
21 merits' before a court may award attorney's fees under
22 § 1132(g)(1)." Hardt v. Reliance Standard Life Ins.
23 Co., 560 U.S. 242, 255 (2010)(citation omitted). Once
24 the court has "determin[ed] a litigant has achieved
25 some degree of success on the merits, [it] must still
26 consider the Hummell factors before exercising [its]
27 discretion to award fees under § 1132(g)(1)." Simonia
28 v. Glendale Nissan/Infiniti Disability Plan, 608 F.3d

1 1118, 1121 (9th Cir. 2010). The Hummell factors
2 include:

3 (1) the degree of the opposing parties'
4 culpability or bad faith; (2) the ability of the
5 opposing parties to satisfy an award of fees;
6 (3) whether an award of fees against the
7 opposing parties would deter others from acting
8 under similar circumstances; (4) whether the
parties requesting fees sought to benefit all
participants and beneficiaries of an ERISA plan
or to resolve a significant legal question
regarding ERISA; and (5) the relative merits of
the parties' positions.

9 Hummell v. S.E. Rykoff & Co., 634 F.2d 446, 453 (9th
10 Cir. 1980). No one factor is decisive, and some may
11 not be pertinent in a given case. Carpenters S. Cal.
12 Admin. Corp. v. Russell, 726 F.2d 1410, 1416 (9th. Cir.
13 1984).

14 **B. Analysis**

15 1. Schwab Achieved Success on the Merits

16 As a preliminary matter, Schwab must show "some
17 degree of success on the merits." Hardt, 560 U.S. at
18 255. The Court granted Schwab's Motion for Summary
19 Judgment on the substantive issues relating to Schwab's
20 alleged breach of fiduciary duties. See Summ. J.
21 Order. Success on a motion for summary judgment
22 constitutes some degree of success on the merits. See
23 Williams v. Metro. Life Ins. Co., 609 F.3d 622, 634
24 (4th Cir. 2010). Accordingly, Schwab has satisfied the
25 threshold requirement for an award of attorney's fees.

26 2. The Hummell Factors

27 As Schwab has shown some degree of success on the
28 merits, the Court turns to the Hummell factors to

1 determine whether fees should be awarded. The first
2 factor is "the degree of the opposing parties'
3 culpability or bad faith." Hummell, 634 F.2d at 453.
4 "[T]o avoid a finding of bad faith under the Hummell
5 factors, plaintiffs must have a reasonable belief that
6 they could prove an actionable ERISA claim." Cline v.
7 Indus. Maint. Eng'g & Contracting Co., 200 F.3d 1223,
8 1236 (9th Cir. 2000)(citing Credit Managers Ass'n v.
9 Kennesaw Life & Accident Ins. Co., 25 F.3d 743, 749
10 (9th Cir. 1994)).

11 In filing her First Amended Complaint, Plaintiff
12 added Schwab as a defendant under the belief that
13 Schwab inappropriately moved Plaintiff's assets and
14 froze Plaintiff's 401(k) account. Schwab has
15 consistently argued that SCPMG Retirement Committee,
16 the Plan Administrator, is the true fiduciary of the
17 Keogh and 401(k) Plans, and therefore, Schwab, as the
18 non-fiduciary recordkeeper of the Plans, cannot be held
19 liable for any alleged breach of fiduciary duties.
20 However, the mere fact that Schwab has argued against
21 the merits of Plaintiff's claims does not prove that
22 the claims truly lacked merit. See Ghorbani v. PG&E
23 Group Life Ins., 100 F. Supp. 2d 1165, 1168 (N.D. Cal.
24 2000) ("[T]he strenuousness with which a defendant
25 objects to a plaintiff's claim might legitimately be
26 regarded as a sign that a case has merit.").
27 Furthermore, the fact that Schwab did not seek
28 dismissal from this action could have reasonably

1 indicated to Plaintiff that her claims had some merit.

2 Additionally, while Plaintiff did not retain Mr.
3 Pingree until after she filed her Complaint, Plaintiff
4 reasonably continued litigation by subsequently relying
5 on Mr. Pingree's opinions that Schwab was a fiduciary
6 and breached its duties. See Pl.'s Reply in Supp. of
7 Mot. for Summ. J., Ex. 1, ECF No. 156-1. Schwab argues
8 that the Court granting Schwab summary judgment is
9 evidence of Plaintiff's bad faith, but "this
10 determination does not necessarily require a finding of
11 bad faith." Wallace v. Bashas' Inc. Grp. Disability
12 Plan, 07-CV-02559-PHX-JAT, 2010 U.S. Dist. LEXIS 67842,
13 at *3 (D. Ariz. June 14, 2010).

14 Plaintiff's case involved several substantial legal
15 issues, and prior to the Court's ruling on the parties'
16 Motions for Summary Judgment, Plaintiff received no
17 indication, other than Schwab's arguments, that her
18 claims lacked merit. Accordingly, Plaintiff did not
19 litigate her claims in bad faith, and thus, the first
20 factor weighs in Plaintiff's favor. See Turnbow v.
21 Tall Tree Adm'rs LLC, 2:09-cv-02288-MCE-EFB, 2010 U.S.
22 Dist. LEXIS 84588, at *5 (E.D. Cal. July 23,
23 2010)(citation omitted) ("Where an action is brought in
24 good faith and presents legitimate legal claims, award
25 of attorney's fees and costs is inappropriate.").

26 The second factor is the ability of Plaintiff to
27 satisfy an award of fees. Hummell, 634 F.2d at 453.
28 Schwab argues that Plaintiff has the ability to pay

1 because she is a highly-paid anesthesiologist with
2 significant retirement assets and the ability to invest
3 in an alleged five million dollar real estate property.
4 Schwab's Reply in Supp. of Mot. for Att'y's Fees 6:13-
5 17, ECF No. 188. Plaintiff submitted a declaration
6 that her savings have been entirely depleted and she is
7 in severe financial distress due to credit card debt.
8 See Decl. of Sujata Vyas in Supp. of Pl.'s Opp'n ¶¶ 3-
9 4, ECF No. 186-1. Other than Plaintiff's self-serving
10 Declaration, she has not presented evidence of her debt
11 and severe financial distress. Thus, this factor
12 weighs neither in favor of nor against awarding
13 attorney's fees. See Aviation W. Charters, Inc. v.
14 United Healthcare Ins. Co., No. CV-14-00338-PHX-NVW,
15 2015 U.S. Dist. LEXIS 3177, at *7 (D. Ariz. Jan. 12,
16 2015)(finding the second factor weighs neither in favor
17 nor against awarding fees when there was no evidence
18 regarding the extent of a claimed undue financial
19 burden).

20 The third factor is whether an award of fees
21 against Plaintiff would deter others from acting under
22 similar circumstances. Hummell, 634 F.2d at 453. As
23 noted, Plaintiff did not initiate and continue this
24 litigation in bad faith, so there would be little to no
25 deterrent effect in awarding fees. See Resilient Floor
26 Covering Pension Tr. Fund Bd. of Trs. v. Michael's
27 Floor Covering, Inc., 11-cv-05200-JSC, 2017 U.S. Dist.
28 LEXIS 399, at *8-9 (N.D. Cal. Jan. 3, 2017) ("The

1 deterrence factor rarely weighs in favor of a fee award
2 against plaintiff-trustees." (citation omitted)).
3 Instead, an award of fees would deter plan participants
4 from bringing potentially meritorious claims. See
5 Lessard v. Applied Risk Mgmt., No. C-99-3371 WHO, 2001
6 U.S. Dist. LEXIS 24784, at *17 (N.D. Cal. May 22,
7 2001) ("[A]n award of fees against Lessard would deter
8 her and other similarly situated persons from
9 attempting to enforce even meritorious ERISA claims in
10 the court system."). Consequently, this factor weighs
11 against an award of fees.

12 The fourth factor is whether Schwab seeks to
13 benefit all participants and beneficiaries of an ERISA
14 plan or resolve a significant legal question regarding
15 ERISA. Hummell, 634 F.2d at 453. This factor is not
16 particularly relevant in a determination of whether to
17 award fees to a prevailing defendant. See Tingey v.
18 Pixley-Richards W., Inc., 958 F.2d 908, 910 (9th Cir.
19 1992). Nonetheless, Schwab argues that a fee award
20 would benefit other plan participants because the more
21 resources it must expend responding to meritless
22 claims, the fewer resources it has to provide services
23 for other plan participants. Mot. 12:22-25. This
24 argument, however, is unconvincing because Plaintiff
25 did not pursue her claims in bad faith, so Schwab is
26 not wasting its resources by defending against
27 Plaintiff's claims. Cf. Saks v. Int'l Longshore &
28 Warehouse Union-Pac. Mar. Ass'n Ben. Plans, LA CV09-

1 02885 JAK (Ex), 2013 U.S. Dist. LEXIS 200209, at *21
2 (C.D. Cal. Nov. 15, 2013)(finding the fourth factor
3 favors a fee award because the plan expended resources
4 defending against a plaintiff's meritless claims).
5 Thus, the fourth factor weighs against awarding Schwab
6 fees.¹

7 The fifth factor is the relative merits of the
8 parties' positions. Hummell, 634 F.2d at 453. This
9 factor weighs in favor of awarding fees to Schwab
10 because Schwab is the prevailing party on the merits.
11 See Corder v. Howard Johnson & Co., 53 F.3d 225, 232
12 (9th Cir. 1994)(noting that the fifth factor will
13 presumably always favor a prevailing party).

14 Ultimately, factors one, three, and four weigh in
15 favor of Plaintiff, factor five weighs in favor of
16 Schwab, and factor two is neutral. On balance, the
17 Hummell factors do not support an award of attorney's
18 fees to Schwab. Such denial of fees reflects the fact
19 that the Hummell factors "very frequently suggest that
20 attorney's fees should not be charged against ERISA
21 plaintiffs."² Credit Managers Ass'n, 25 F.3d at 748

22
23 ¹ Plaintiff does not discuss Schwab's argument that the
24 relief sought resolves important legal questions regarding ERISA.
25 See Opp'n 17:20-18:5. However, despite Plaintiff's failure to
address this argument, the Court's ruling on Schwab's Motion for
Summary Judgment did not resolve any significant legal questions.

26 ² Of note, the Ninth Circuit has clarified that "the playing
27 field is level," and therefore, courts "must focus only on the
Hummell factors, without favoring one side or the other" when
28 determining whether to award attorneys' fees under ERISA. Estate
of Shockley v. Alyeska Pipeline Serv. Co., 130 F.3d 403, 408 (9th

1 (citation omitted). Accordingly, an award of
2 attorney's fees to Schwab is inappropriate, and the
3 Court does not need to analyze whether the fees Schwab
4 requested are reasonable.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Schwab's Motion for
7 Attorney's Fees [177] is **DENIED**.

8 **IT IS SO ORDERED.**

9
10 DATED: 12/21/2017 s/ RONALD S.W. LEW

11 **HONORABLE RONALD S.W. LEW**
12 Senior U.S. District Judge

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27 Cir. 1997). However, this does not detract from the fact that
28 ERISA was enacted to protect participants and beneficiaries. See
McElwaine v. US W., Inc., 176 F.3d 1167, 1172 (9th Cir. 1999).